STATE OF MICHIGAN

COURT OF APPEALS

HOWARD COLLINS,

Plaintiff-Appellant,

v

CITY OF PORTAGE and CINDY BEZAURY,

Defendants-Appellees.

UNPUBLISHED
September 1, 2000

No. 217532
Kalamazoo Circuit Court
LC No. 98-000346-NZ

Before: Meter, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition to defendants under MCR 2.116(C)(10). We affirm.

We review a trial court's grant of summary disposition under MCR 2.116(C)(10) de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We review the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party and decide if there exists a genuine issue of material fact. *Morales v Auto-Owners*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Plaintiff alleged that defendants, by failing to provide him with a position as an equipment mechanic, discriminated against him in violation of the Persons with Disabilities Civil Rights Act [hereinafter "PWDCRA"], MCL 37.1101 *et seq*., MSA 3.550(101) *et seq*. To recover under the PWDCRA, a plaintiff first must prove that he is disabled as defined by the statute. See *Chiles v Machine Shop Inc*, 238 Mich App 462, 473; 606 NW2d 398 (1999), and *Lown v JJ Eaton Place*, 235 Mich App 721, 727; 598 NW2d 633 (1999).

The PWDCRA defines a "disability," in relevant part, as follows:

> A determinable physical or mental characteristic of an individual which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

> (A) . . . substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion. [MCL 37.1103(d)(i); MSA 3.550(103)(d)(i).][1]

As stated in *Chiles, supra* at 479, quoting *Snow v Ridgeview Medical Center*, 128 F3d 1201, 1207 (CA 8, 1997), "'it is not enough for an impairment to affect a major life activity,' . . . but rather the plaintiff must proffer evidence from which a reasonable inference can be drawn that such activity is substantially limited." Here, the evidence, viewed in the light most favorable to plaintiff, showed that plaintiff had a ten-pound lifting restriction for approximately one week, a fifteen-pound lifting restriction for approximately one week, a twenty-pound lifting restriction for approximately one month, a twenty-five pound lifting restriction for approximately three-and-one-half months, an unspecified (but more than twenty-five pound) lifting restriction for approximately one month, and a permanent fifty-pound lifting restriction. Under current Michigan case law, these lifting restrictions, without more, failed to create a question of fact regarding whether plaintiff was disabled within the meaning of the PWDCRA. See *Lown, supra* at 732-736. Moreover, plaintiff, like the plaintiff in *Lown*, failed to produce additional evidence, beyond mere lifting restrictions, that he was substantially limited in major life activities. *Id*. Accordingly, summary disposition was appropriate, albeit for a different reason than the reason cited by the trial court.[2] *Id*. at 736; *Ellsworth v Hotel Corp*, 236 Mich App 185, 190; 600 NW2d 129 (1999) (this Court will not reverse a decision of a trial court as long as the court reached the right result).

Plaintiff additionally argues that the trial court erred by not examining whether there was a cause of action for retaliation under MCL 37.1602; MSA 3.550(602). However, not only did plaintiff fail to set forth a retaliation claim below, but he also failed to show or even allege that defendants took adverse action against him because he asserted his rights or engaged in a protected activity. See *Garavaglia v Centra, Inc*, 211 Mich App 625, 628; 536 NW2d 805 (1995) (providing that issues raised for the first time on appeal are not preserved for appellate review), and *Polk v Yellow Freight System, Inc*, 876 F2d 527, 531 (CA 6, 1989) (setting forth elements for a retaliation charge). No error occurred.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell

---

[1] We note that at the time plaintiff filed his lawsuit, this definition was contained in MCL 37.1103(e)(i); MSA 3.550(103)(e)(i).

[2] The trial court granted summary disposition because it found that defendants had articulated a legitimate, nondiscriminatory reason for not placing plaintiff into a mechanic position.